UNITED STATES PATENT AND TRADEMARK OFFICE
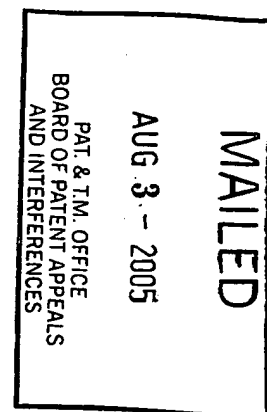
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC JONATHAN BAUER,
YUK-MING PETER LAM and JOHN ORLEANSKI

Appeal No. 2005-1887
Application No. 09/783,191

ON BRIEF

Before HAIRSTON, KRASS, and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-41.

The invention pertains to allocating bandwidth in packet telephony systems. In particular, a network monitoring agent monitors network conditions, such as traffic volume, and determines when to dynamically adjust the encoding scheme for one or more connections in the network, while maintaining a desired level of quality.

Representative independent claim 1 is reproduced as follows:

1. A method for dynamically adjusting the bandwidth utilized by a plurality of applications, each of said applications communicating with an endpoint over a connection in a network, said method comprising the steps of:

selecting at least one encoding scheme for at least one of said connections during a call set-up phase based upon an encoding requirement of said application associated with said at least one connection, each of said applications having a different encoding requirement;

monitoring one or more conditions on said network during said at least one connection; and

selecting a new encoding scheme for said at least one connection if one or more conditions have occurred.

The examiner relies on the following references:

Sharma et al. (Sharma)	5,546,395	Aug. 13, 1996
Javitt	5,926,483	Jul. 20, 1999
Weser et al. (Weser)	6,104,803	Aug. 15, 2000

Claims 1-34 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Claims 1, 8, 10, 17-19, and 27 stand rejected under 35 U.S.C. §102 (b) as anticipated by Sharma.

Claims 2-7, 9, 11-16, 20-26, and 28-41 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner offers Sharma and Javitt with regard to claims 2-7, 9, 11-16, 20-26, 28-37, 40, and 41, adding Weser to the combination with regard to claims 38 and 39.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

Turning, first, to the rejection of claims 1-34 under 35 U.S.C. §112, second paragraph, the examiner asserts that there is no proper antecedent basis for "said connections" (plural) in claim 1, line 4, claim 10, line 6, claim 19, line 4, and claim 27, line 6.

We have reviewed the claims and we will not sustain the rejection under 35 U.S.C. §112, second paragraph, because there is clear antecedent basis in the preamble of the claims. For example, in claim 1, "each of said applications communicating with an endpoint over a connection in a network..." clearly provides antecedent basis for the later recited "at least one of said connections" because the

former recitation talks about "each" of plural applications having an endpoint over a

connection. Therefore, there is a plurality of connections because there is a plurality of

applications.

Turning to the rejection under 35 U.S.C. §102 (b), a rejection for anticipation

under section 102 requires that the four corners of a single prior art document describe

every element of the claimed invention, either expressly or inherently, such that a

person of ordinary skill in the art could practice the invention without undue

experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed.

Cir. 1994).

The examiner simply points to the abstract and column 1, line 67, through

column 2, line 24, of Sharma and contends that the reference teaches the claimed

method. The examiner notes the "at least one connection" as recited in the claims but it

is difficult to tell what the examiner relies on in the reference for this teaching. The

examiner then cites the use of pre-recorded messages in Sharma, as a first application,

which are sent over a telephone line uncompressed (citing column 7, lines 5-14) and

the use of a voice, as another application, sent compressed (citing the abstract). Thus,

the examiner appears to contend that a pre-recorded message is a first application and

sending a voice over a telephone line is another application, making for a plurality of applications, as claimed.

The examiner further points to column 32, lines 31-41, for a showing that for a moderate quality voice over data applications, one compression algorithm is used, but if applications need higher fidelity, then a new compression algorithm is renegotiated continually for conferences (answer-page 3).

We will not sustain the rejection of claims 1, 8, 10, 17-19, and 27 under 35 U.S.C. §102 (b) because, in our view, the examiner has not established a prima facie case of anticipation.

We agree with appellants that while Sharma is directed to allocating bandwidth, the teaching therein is limited to bandwidth allocation for a single communications connection between two sites **for a single application**, viz., a voice compression algorithm. We further agree with appellants that the examiner's reliance on Sharma's disclosure of voicemail and conferencing for a showing of multiple applications, is misplaced. There is no teaching in Sharma that these applications are executed at the same time.

Sharma indicates, at column 32, lines 31-35, that the frequency of transmitting the speech compression command supervisory packet 'will vary with the application" and that for "applications [emphasis added] requiring more fidelity...," but these are merely indications that other applications are possible. It does not suggest that more than one application is of interest or is executed at any given time.

As far as we can tell from our review of Sharma, appellants appear to be correct in their assessment, at page 3 of the reply brief, that "Sharma is directed to bandwidth allocation for a single application" and the examiner has pointed to nothing within Sharma to convince us otherwise.

Accordingly, since each claim is directed to a "plurality of applications" and an encoding scheme is selected "for at least one of said connections" based upon an encoding requirement "of said application associated with at least one connection, each of said applications having a different encoding requirement" and then a new encoding scheme is selected "for at least one connection if one or more conditions have occurred," Sharma's lack of a plurality of applications and a selection of new encoding schemes for a connection when conditions change prevent it from anticipating the instant claims.

Independent claim 35 stands rejected under 35 U.S.C. §103, with Javitt added to

Sharma for a finding of obviousness. Claim 35 differs from the other independent

claims in that is does not call for a plurality of applications. Instead, it is directed to a

method for encoding a connection between a calling party and an application in a

network. The connection that is established has a "plurality of call segments" between

the calling party and the application, and each of the segments has a different encoding

requirement. An encoding scheme is selected for each of the call segments based on

the corresponding encoding requirement.

It is the examiner's position that Sharma teaches the claimed subject matter but

for explicitly teaching the call segments (or half circuits and independently selecting

aspect of other claims). But, the examiner relies on Javitt for such a teaching at column

3, lines 56-64, and column 4, lines 57-61, finding that it would have been obvious "to

have incorporated the ability to dynamically and independently adjust the bandwidth

utilized by a plurality of applications for each half circuit or segment...in

Sharma...because a user on one half of the circuit may have different preferences than

another user on the other half of the circuit. That is, one user may have a preference

for compression while another user may not" (answer-page 4).

We agree, again, with appellants in that Sharma is limited to bandwidth allocation for a single communications connection between two sites for a single application, viz., a voice compression algorithm. While Javitt is directed to a communication system providing compression of voice and image communications, neither one of the references discloses or suggests that each connection has a plurality of call segments, each having a different encoding requirement, and that an encoding scheme is selected for each of the call segments, as claimed.

While appellants have made this argument in at least the supplemental brief and the reply brief, the examiner has remained silent. The examiner offers no response in the response section of the answer, apparently relying solely on the explanation at page 4 of the answer as a basis for the rejection. However the examiner's explanation is insufficient to explain how either of the cited references is suggestive of the claimed limitation of each connection having a plurality of call segments, with each call segment having a different encoding requirement, and that an encoding scheme is chosen for each of the call segments.

Accordingly, we will not sustain the rejection of independent claim 35 under 35 U.S.C. §103.

Moreover, since the limitations of the independent claims are not met by the references, we will not sustain the rejection of dependent claims 8, 17, and 18 under 35 U.S.C. §102 (b) or the rejection of claims 2-7, 9, 11-16, 20-26, 28-34, and 36-41 under 35 U.S.C. §103.

Since we have not sustained any of the outstanding rejections of the claims, the examiner's decision is reversed.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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ERROL A. KRASS) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
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